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What does the fox say?

Ethics

- The Hunting Act 2004 helps maintain my welfare as hunting 'seriously compromises' it. The act recognises that causing me to suffer for sport is unethical and should, as far as it is practical, be stopped.
- Fox hunting is a blood sport which involves inflicting unnecessary suffering on my kind for human entertainment.
- This is unethical as hunts consist of hounds being directed to seriously injure me.
- However, the Hunting Act does not fully help to maintain my welfare as it 'does not impose a complete blanket ban, on hunting'. Exemptions to hunting specified in Schedule 1 of the Hunting Act enables hunters to kill me if they hunt for purposes specified such as to flush me out to prevent me from damaging your livestock.
- Although my family may cause damage, to react by hunting me surely is extremely unethical? Other methods could be used to keep me away. The Hunting Act does help maintain my welfare, but the act does not specifically mention why hunting me is unethical as it is not Parliament's duty to impose their moral views.

Recommended reforms

- To more adequately prevent the killing of foxes, we recommend that the Hunting Act 2004 should be amended as follows:
- Sentencing powers should be increased to reflect other animal welfare legislation penalties, such as the Wild Mammals Protection Act 1996. By having a maximum penalty of 6 months imprisonment for committing an offence, this will help successfully deter wealthy hunters from continuing to hunt.
 - An attempted hunting offence should be implemented into the act. This will deter hunters from killing us if they know that they could be prosecuted for attempting to hunt, even if they do not end up hunting.
 - Regarding the exemptions to hunting specified in Schedule 1, such as hunting to protect livestock, it should be specified that hunting shall be the last resort. By forcing landowners to use alternative methods to keep us away, this can reduce the unnecessary killing of foxes. We believe that these reforms will help deter active hunters from killing us.

History

- I just want to give a big thank you to groups such as the RSPCA and IFAW, who pressured the government into implementing the Hunting Act of 2004 which 'prevents or reduces unnecessary suffering to wild mammals'. This is a piece of legislation which helps save the lives of me and many other innocent foxes.
- Let me take you back on a little journey:
- Early 16th Century: My ancestors were regarded as vermin and were often hunted by farmers and other landowners as a form of pest control and for our highly prized fur. I'm no pest!
- Early 18th Century: The killing of my ancestors developed into a sport, we were being hunted on a daily basis for human pleasure.
- 19th Century: The killing continues and becomes even more popular.
- We've been through many struggles, hunted by the rich and the poor for entertainment purposes. But I am thankful to those who began to oppose this degrading and barbaric treatment and as a result, the hunting of foxes with hounds is now illegal.
- We have a lot of support from the public. These statistics from 2017 show that 85% of people think that fox hunting should remain illegal which is an increase from a poll that was conducted prior to the act, where 61% were in favour.
- This shows that public perception has changed towards me which could show a correlation between the law and its effects on social attitudes.

Cases

- Although we would prefer to be hidden away from humans, it does come in handy to be protected by cameras, especially when there are hunters around. There have been many successful prosecutions by our supporters such as the RSPCA and IFAW using the Hunting Act 2004.
- In September 2013, D pleaded guilty to hunting a fox with dogs contrary to S.1 after being caught on camera by the IFAW and faced a £500 fine. Similarly, in August 2013, 4 members of a hunting group pleaded guilty under S.1 after being filmed by the LAC shooting foxes with dogs and faced financial penalties. These cases suggest the Hunting Act 2004 effectively prosecutes those caught hunting us foxes.
- In DPP v Wright (2009), D was convicted under S.1 for hunting foxes with the use of dogs. He claimed that he was doing it to flush the fox out, which is one of the exemptions to the act and that he was not at the time of arrest hunting any foxes and so was not criminally liable. Therefore they were unable to disprove that D's hunting was exempt.
- This proves that there is loopholes in the law where hunters can avoid prosecution so we believe this act needs reforming to protect all wild mammals.

References

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- IFAW, Successful prosecutions', <<https://www.ifaw.org/united-kingdom/our-work/banning-hunting-dogs/successful-prosecutions>>, accessed 21 November 2018
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- League Against Cruel Sports, Opposition to fox-hunting remains at an all-time high' (26 December 2017), <<https://www.league.org.uk/News/opposition-to-fox-hunting-remains-at-an-all-time-high>>, accessed 10 November 2018

The Act itself

- The Hunting Act 2004 is my favourite wildlife legislation in the UK. It was created to protect my rights and came in the force in 18th February 2005. Under S.1 of the Hunting Act 2004, hunting me or my family with dogs is a criminal offence.
- There are four specific sections that relate to me:
- S.1 - Makes illegal to hunt us or any other wild mammal with use of dogs
- S.2 - Specifies exemptions to hunting are specified in Schedule 1
- S.3(1) - Prohibits permitting land to be used for hunting purposes
- S.3(2) - Prohibits permitting a dog to be used for hunting purposes
- S.6 - Punishes horrible hunters which have killed us can lead to a summary offence which does not exceed the level 5 standard scale of a fine which is up to £5000.
- We believe that S.6 is not a big enough deterrent as it is predominantly an upper class sport. Therefore we believe that S.6 should be reformed to enforce a higher penalty which will deter the humans.

Does the Hunting Act 2004 adequately prevent the killing of foxes?

Foxes have been hunted for decades in the United Kingdom due to it being an essential part of British culture. However, nowadays the public are strongly against fox hunting. This is evident from The Hunting Act 2004 (Act 04) being enforced to protect wild mammals. Despite the Act being in effect there have been cases where suspected hunters have gotten away with being convicted of hunting as a result of loopholes within the current legislation. Therefore in order to improve the effectiveness of the Act it must be built upon. Through analysing the Act itself alongside cases, ethical issues of hunting and changing social attitudes, we will consider whether the Act can be altered so that it can adequately prevent the killing of foxes.

The Act 04 came into force in February 2005 and became a popular and controversial piece of legislation in the UK. It was influenced by the Scottish law: Protection of Wild Mammals Act 2002. The Act 04 was designed to make chasing and deliberately killing wild mammals with use of dogs illegal (S.1) and to improve wildlife in England and Wales.

The offences are specified in following sections:

S.1 states that a person commits an offence if he hunts a wild mammal with dogs.

S.3 makes it illegal to permit land to be used for hunting and to use dogs for hunting.

S.6 any person found guilty under Act 04 will be subject to penalties. The maximum available penalty is a fine up to £5000¹.

¹ *Friend V United Kingdom* [2009] 11 WLUK 569; (2010) 50 EHRR SE6, at 70

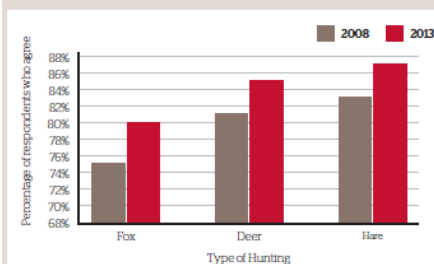
This research report focuses mainly on fox hunting. As presented in the diagram² it has been influenced by public pressure. Although Act 04 consists of 17 sections, only 4 sections relates to fox hunting which leaves an extensive gap in the law. This suggests that creation of this act was rushed as it does not cover all types of hunting used to kill foxes. Such exemptions to unlawful hunting is specified in S.2 Schedule 1 as follows:

- Flushing out foxes to prevent or reduce serious damage to livestock³
- Falconry⁴ (using birds to hunt)
- Rescue of wild mammal⁵
- Research and observation⁶ (hunting for research)

Therefore the Act 04 has contributed towards preventing fox killings as shown by the number of successful prosecutions e.g. 52 people were convicted in 2017⁷. However to ensure that Act 04 prevents hunters from avoiding prosecution through loopholes, it must be amended to make the

Figure 2. Figures from Ipsos Mori polls commissioned by the League in 2008 and 2013. Unweighted sample sizes: 2008 = 2,032; 2013 = 1,983.

Hunting with dogs should remain illegal



2 League Against Cruel Sports, 'The Hunting Act 2004: Ten years on', November 2014

<<https://www.league.org.uk/Handlers/Download.ashx?IDMF=ae3b8c54-0896-44e8-8165-e47b0730532c>> accessed 19 November 2018, pg 11

³ Hunting Act 2004, Sch 1, para.1

⁴ Ibid. para.6

⁵ n.3, para.8

⁶ n.3, para.9

⁷ Parliament UK, Lucy Frazer, <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-06-06/150579/>> accessed 19 November 2018

criteria for criminal liability more strict. Furthermore, as hunting is predominantly an upper class sport, the maximum penalty does not effectively prevent fox-hunting as this is not a major deterrent to them because of their wealth. Therefore the punishment for being convicted under Act 04 must be increased. The League Against Cruel Sports (LACS) suggests that sentencing powers should be increased to '*be in line with the Protection of Badgers Act and Wild Mammals Protection Act, with a maximum penalty of six months imprisonment*'⁸. This reform to S.6 of Act 04 is reasonable as it would put a bigger deterrent in place to prevent upper class hunters from continuing to kill foxes.

Recent hunting cases have had different outcomes, suggesting that the effectiveness of Act 04 in adequately preventing fox killings varies according to the facts of the case. In a case brought privately by RSPCA in September 2013, D pleaded guilty to hunting a fox with dogs contrary to S.1 after being caught on camera by the IFAW⁹ and faced a £500 fine. Similarly, in August 2013, 4 members of a hunting group pleaded guilty under S.1 after being filmed by the LACS hunting foxes with dogs¹⁰ and faced financial penalties. These cases suggest that Act 04 quite effectively prosecutes those caught hunting foxes.

The *RSPCA V McCormick* [2016]¹¹ case suggests that penalties under Act 04 should be increased. D was convicted under the Animal Welfare Act 2006. However, his conviction was dropped using a loophole as to be held liable the dogs had to be in the presence of mammals, which was not the case here. The court stated that the penalty for animal fighting is harsher under the 2006 Act than

⁸ League Against Cruel Sports, 'Strengthening the Hunting Act', <<https://www.league.org.uk/hunting-act>> accessed 19 November 2018

⁹ BBC, 'Somerset man pleads guilty to hunting fox with dogs', <<https://www.bbc.co.uk/news/uk-england-24077013>> accessed 21 November 2018

¹⁰ IFAW, 'Successful prosecutions', <<https://www.ifaw.org/united-kingdom/our-work/banning-hunting-dogs/successful-prosecutions>> accessed 21 November 2018

¹¹ *RSPCA V McCormick* [2016] EWHC 928 (Admin); [2016] 1 WLR 2641

Act 04 as ‘*D can be imprisoned for up to six months and disqualified from keeping animals for life. Under the Hunting Act, only financial penalties are available, with no risk of disqualification*’¹². This suggests that having stricter penalties for hunting will make Act 04 more effective as it will be a stronger deterrent to wealthy hunters.

However, by relying on loopholes and hunting exemptions, hunters can avoid prosecution. In *DPP v Wright [2009]*¹³, D was convicted under S.1 for hunting foxes with dogs, which he claimed he was doing to flush the fox out, one of the exemptions to hunting. D appealed on the basis that although he may have had the intent to hunt, he was not, at the time of arrest, hunting any foxes and so was not criminally liable. Consequently, the appeal was allowed as the prosecution failed to disprove that D’s hunting was exempt. The literal approach to statutory interpretation allowed D to avoid liability as the wording of ‘Stalking a wild animal or flushing it out’¹⁴. The Crown Court ruled that ‘*you do not...stalk an unidentified wild mammal by merely searching for it...the use of the words “it” requires that the wild mammal has been identified*’¹⁵. Here D had not identified a fox to hunt so his charges were dropped because ‘hunting’ implies pursuing a fox, which D had not done. It was also said that ‘*A person who left home intending to search for a fox might in a sense be going hunting, but he was not at that moment hunting because the wild animal had not yet been found*’¹⁶.

This case implies that Act 04 is not fully effective in preventing fox killings because by allowing D’s appeal, the court provided D with another chance to kill foxes. It is evident that attempted

¹² *ibid.* At 2647

¹³ *DPP V Wright [2009] EWHC 105 (Admin); [2010] QB 224*

¹⁴ n.3

¹⁵ n.13 at 234

¹⁶ *Ibid.*

hunting is not a criminal offence under Act 04 which is problematic as it gives hunters a loophole, a chance to avoid conviction in a situation where, if they had not been caught, would have hunted the fox anyways. This gap in Act 04 must be reformed to include an attempted hunting offence. This proposed reform would be likely to work as it will deter hunters from killing foxes if they know they will be held criminally liable for attempting to hunt even if they do not end up hunting.

There are several reasons as to why Act 04 was introduced. Years of pressure from groups such as the RSPCA and IFAW forced the government into implementing an act which would '*prevent or reduce unnecessary suffering to wild mammals*'¹⁷. However, farmers and landowners may still protect their livestock by eliminating wild mammals which may be a threat.

Prior to the introduction of the Act, animals such as foxes were regarded as 'vermin' and were often hunted by farmers and other landowners as a '*form of pest control (both to curb their attacks on farm animals and for their highly prized fur)*'¹⁸. It wasn't until the eighteenth century where fox hunting developed into its most modern incarnation and '*was considered a sport*'¹⁹; as a result of the decline in the deer population. Foxhunting continued to grow in popularity throughout the nineteenth century. Hunting became associated with kingship where '*large tracts of land were preserved for the king's pleasure as they would hunt a variety of game and even exotic animals imported from abroad*'²⁰. Some historians believe that hunting was critical in displaying royal

¹⁷ The Hunting Act for enforcement professionals, 'The Hunting Act', <<http://www.huntingact.org/hunting/hunting-in-the-uk/>> accessed 21 November 2018

¹⁸ Historic UK, 'Fox hunting in Britain', <<https://www.historic-uk.com/CultureUK/Fox-Hunting-in-Britain/>> accessed 10 November 2018

¹⁹ Ibid.

²⁰ 'How did hunting become a symbol of royalty', <https://dailyhistory.org/How_did_hunting_become_a_symbol_of_the_royalty%3F> accessed 19 November 2018

authority. It was far more than pleasure or sport; it had '*an important social function in establishing not only the kings' power but demonstrating the vitality of the state*'²¹.

These points above highlights social attitudes towards animals throughout time; prior to the implementation of the Hunting Act. Up until this period, there was no consideration to the welfare of an animal but innocent 'creatures' were merely used as a source of entertainment for a large proportion of society. But since the implementation of the Act, have social attitudes changed? Has the Act been successful in preventing and reducing 'unnecessary suffering to mammals'?

Statistics from a poll conducted in 2017²² show that 85% of people think that fox hunting should remain illegal which is an increase from a poll that was conducted prior to the Act, where 61% were in favor. This shows that public perception has changed slightly and could show a correlation between the law and its effects on social attitudes. However, there are still those who still support the hunting of animals E.G trail hunters; which highlights the inconsistencies within the current law. Trail hunters mimic traditional hunting by '*following an animal-based scent trail which has been laid in areas where foxes or hares are likely to be*'²³ and use this as a grey area around the law. Recent news reports²⁴ show that many hunters can get around the Act by replicating live quarry hunting to allow huntsman to train hounds on animal-based scents in anticipation that the

²¹ Ibid.

²² League Against Cruel Sports, 'Opposition to fox-hunting remains at an all-time high' (26 December 2017), <<https://www.league.org.uk/News/opposition-to-fox-hunting-remains-at-an-all-time-high>> accessed 10 November 2018

²³ League against Cruel Sports, 'Trail hunting – the truth', <<https://www.league.org.uk/trail-hunting>> accessed 10 November 2018

²⁴Mattha Busby (26th December 2017), 'Fox hunting: activists claim trail-hunts are a cover for continued blood sport', <<https://www.theguardian.com/uk-news/2017/dec/26/fox-hunting-activists-claim-trail-hunts-are-a-cover-for-continued-bloodsport>> accessed 21st November 2018

Act 04 will eventually be repealed, and if they come across a fox by accident then they are not liable.

Others that support the hunting of animals include high-profile figures such as Theresa May, who recently attempted to legalise fox hunting. This could show a link between social backgrounds and their attitudes in society. It is apparent that those who are pro-hunters are mostly from upper-class backgrounds and in previous decades were the ones that hunted for daily entertainment E.G Kings and Dukes.

So, the Act has been successful in reducing the amount of people that kill foxes, however it has not successfully prevented hunting which is evident as foxes are still being hunted by trail hunters. This could be because the Act has not been successful in changing social attitudes and therefore it will never be fully effective until social attitudes change. Whilst most of the public are against fox hunting the attitudes of the upper class have supposedly not changed, as evident in the number of prosecutions each year²⁵.

The ethical issue which surrounds fox hunting is maintaining animal welfare. As YouTube videos²⁶ provides guidance on how to hunt while avoiding the law, this suggests that Act 04 requires more restrictions to reduce fox killing. In the report following the Burns Inquiry, a government inquiry set up to discuss hunting with dogs, the committee found that hunting foxes with dogs '*seriously compromises the welfare of the fox*'²⁷. Anti-hunting groups, such as the LACS, discourages hunting because it is a blood sport. During hunts, foxes suffer death from the

²⁵ n.7

²⁶ YouTube, 'How to break the hunting act and get away with it',
<<https://www.youtube.com/watch?v=iNHrLWiqxqk>> accessed 21 November 2018

²⁷ Home Office, *Report of Committee of Inquiry into Hunting with Dogs in England & Wales* (Cm 4763, 2000) para 56

infliction of serious injuries from hounds. Recent statistics²⁸ on public opinions of hunting corroborates the view that fox-hunting is unethical because it causes unnecessary suffering.

A problem that Act 04 presents is that it does not impose a complete ban on hunting, as schedule 1 of the Act provides nine exemptions. This can be explained by the fact that the statutory aim of the Act 04 is *'to prevent or reduce unnecessary suffering to wild mammals'* and that *'causing suffering to animals for sport is unethical and should, so far as practicable and proportionate, be stopped'*²⁹. As schedule 1 highlights the practical aspects of exempt hunting, such as pest control, *'the exemptions seem to dilute the ethical standpoint of the Act with a utilitarian element'*³⁰. This view is reasonable as the Burns inquiry was not set up to *'consider moral or ethical issues'*³¹ of hunting. The main purpose was to explore the practical aspects of hunting regarding the rural economy, countryside culture and the management of wildlife³². This suggests that Parliament did not consider it reasonable to explore the ethical issues of hunting in detail in the Act³³. This implies that The Hunting Act does not adequately prevent the killing of foxes as it does not fully emphasise the importance of protecting foxes from harm. Rather the exemptions seem to promote an increase in using different methods to kill foxes such as trail hunting. On the other hand, the idea that the Act does not focus solely on enforcing the ethical implications of fox-hunting is beneficial as the role of the Parliament is to create legislation without imposing their own moral values into it.³⁴

²⁸ n.22

²⁹ n.2, at pg 5

³⁰ Ilona Cheyne and John Alder, 'Environmental Ethics and Proportionality: Hunting for a Balance', (2007) 9(3), Env L. Rev. 171, 174

³¹ n.27, at para 2

³² *ibid.*

³³ n.30 at 183

³⁴ n.30, at 188

The exemptions to hunting are reasonable as protecting livestock is essential for farmers to make their livelihood.

However, in order to adequately prevent the killing of foxes, a compromise should be implemented in the Act 04 between the utilitarian aspect of hunting foxes and the ethical value of preventing fox cruelty. Farmers who want to protect their livestock from foxes should ensure that alternative methods are used to keep foxes away. The LACS suggest that secure electric fences can be used to protect livestock³⁵. This alternative may ensure that animal cruelty is reduced, thus fulfilling the statutory aim of the hunting act.

To conclude, the Act 04 is an effective law as there were 52 successful prosecutions in 2017³⁶. IFAW has contributed to this by filming the hunts which has acted as a deterrent ensuring that people abide by the law³⁷. However, the burden of proof is difficult because cases require video footage where a fox is in plain sight and the hounds are being encouraged by the huntsman to hunt by not calling the hounds back or sounding the horn, which makes it difficult to even stand a chance for a prosecution.

Also there are still issues with enforcement as loopholes in Act 04 are consequently exploited so people can avoid prosecution. In order for Act 04 to adequately prevent the killing of foxes the Act needs to be amended to lessen exploitation of the Act. Recommended amendments include: making attempted hunting unlawful as this is not specified in Act 04; make the penalties stricter and to re-write hunting exemptions (s.2) while removing the research and observation exemption.

³⁵ League Against Cruel Sports, 'Fox-Hunting', <<https://www.league.org.uk/fox-hunting>> accessed 10 November 2018

³⁶ n.7

³⁷ n.10

These reforms are essential as stricter criteria for criminal liability and higher penalties may help to deter those who actively partake in hunts.